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THE TARIFF OF 1909

III. THE EFFECT OF THE ACT UPON FOREIGN RELATIONS

I

The Tariff Act of 1909 contained provisions designed to govern our relations with foreign countries which constituted a broad and almost epoch-making departure from previous policy. One of the principal influences which had originally tended to bring about a revision of the Dingley Law was the desire of influential bodies of business men and manufacturers that better terms should be secured for our exports in foreign markets. The large and increasing business in manufactured goods which within recent years we had been doing with foreign countries, as well as the fact that our exporters found themselves seriously hampered by the trade preferences and commercial discriminations established among those countries themselves, had formed the foundation of a demand that in some way this condition should be relieved. Chairman Payne of the House Ways and Means Committee in announcing, some months before the actual process of revision was undertaken, that such a plan was contemplated by the party, had mentioned the desire for the establishment of a maximum and minimum schedule of duties as one of the considerations impelling himself and his associates to such unprecedented action. Mr. Payne had been as good as his word in this regard and had included in the very first published draft

of the Payne tariff bill a provision for the establishment of maximum rates, designed to afford a basis for traffic with foreign countries. A superficial study of existing tariff systems had suggested to Mr. Payne and the Ways and Means Committee at least three possible methods of dealing with the maximum and minimum question, all of which were more or less fully discussed while the bill was still undergoing the process of preparation. (1) By some it was proposed that, after the existing level of tariff rates had been established in the new bill, provision should be made for letting down these rates by a specified percentage in the case of those countries which were entitled to our best treatment. This would have meant, say, the subtraction of probably 10 or 20 per cent. from certain schedules of duties, the lower rates thus established to be applicable only to favored countries which had given us their best tariff treatment. (2) A second plan which was suggested was that of allowing our administrators to choose from among a specified range of schedules, letting some down in favor of certain countries and keeping others up according as conditions and the advantages offered us by such other countries might seem to dictate. (3) A third plan was that of establishing a general minimum tariff and then fixing a higher level of rates which should be enforced against those countries which did not give us the benefit of their best tariff terms. Of these methods the third was the least desirable—a fact that was made plain to the committee and to Mr. Payne himself by disinterested experts who were called upon for advice. Nevertheless, when the Payne bill made its appearance, the third plan was the one that proved to have been accepted. This choice had been made at the instance of protected producers who maintained that the letting down of duties below a maximum level in the interest of favored countries would produce an element of uncertainty in business, whereas the advancing of rates above a minimum level in the case of countries which were to be penalized would have the opposite effect. It was also doubtless true that the committee feared to place in the bill an open statement of the maximum rates that should actually go into effect and from which concessions or reductions would be made. This maximum and minimum pro-

vision as reported by Mr. Payne provided for an advance, applicable to those countries that were to be penalized, of 20 or in some cases 25 per cent. of the general rates established in the bill. The advance was not level over all commodities but was effective over a considerable portion of the dutiable schedules. Briefly stated, therefore, the Payne plan was this: A certain large range of commodities already dutiable should under given conditions be subjected to an advance of 20 or 25 per cent. of the duties already established. A commodity taxed at 50 per cent. *ad valorem,* for example, would pay 60 per cent. under the maximum rates; one dutiable at $1 per pound would pay $1.20 under the maximum rates. The application of the maximum rates was to take place, if at all, *en bloc,* no special commercial reciprocity treaties therefore being possible.

This plan passed through various changes while the bill was in the House. It had been very crudely drafted and was decidedly improved upon in language and application as time went on. When the tariff bill was reported from the Senate Finance Committee the Payne maximum and minimum provision was, however, dropped, and nothing was substituted. Several weeks later, Senator Aldrich reported from the Finance Committee a plan which later became sec. 2 of the bill. As finally passed, after minor modifications had been introduced into it, this read as follows:

SEC. 2. That from and after the thirty-first day of March, nineteen hundred and ten, except as otherwise specially provided for in this section, there shall be levied, collected, and paid on all articles when imported from any foreign country into the United States, or into any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), the rates of duty prescribed by the schedules and paragraphs of the dutiable list of section one of this Act, and in addition thereto twenty-five per centum *ad valorem;* which rates shall constitute the maximum tariff of the United States: *Provided,* That whenever, after the thirty-first day of March, nineteen hundred and ten, and so long thereafter as the President shall be satisfied, in view of the character of the concessions granted by the minimum tariff of the United States, that the government of any foreign country imposes no terms or restrictions, either in the way of tariff rates or provisions, trade or other regulations, charges, exactions, or in any other manner, directly or indirectly, upon the importation into or the sale in

such foreign country of any agricultural, manufactured, or other product of the United States, which unduly discriminate against the United States or the products thereof, and that such foreign country pays no export bounty or imposes no export duty or prohibition upon the exportation of any article to the United States which unduly discriminates against the United States or the products thereof, and that such foreign country accords to the agricultural, manufactured, or other products of the United States treatment which is reciprocal and equivalent, thereupon and thereafter, upon proclamation to this effect by the President of the United States, all articles when imported into the United States, or any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), from such foreign country shall, except as otherwise herein provided, be admitted under the terms of the minimum tariff of the United States as prescribed by section one of this Act. The proclamation issued by the President under the authority hereby conferred and the application of the minimum tariff thereupon may, in accordance with the facts as found by the President, extend to the whole of any foreign country, or may be confined to or exclude from its effect any dependency, colony, or other political subdivision having authority to adopt and enforce tariff legislation, or to impose restrictions or regulations, or to grant concessions upon the exportation or importation of articles which are, or may be, imported into the United States. Whenever the President shall be satisfied that the conditions which led to the issuance of the proclamation hereinbefore authorized no longer exist, he shall issue a proclamation to this effect, and ninety days thereafter the provisions of the maximum tariff shall be applied to the importation of articles from such country. Whenever the provisions of the maximum tariff of the United States shall be applicable to articles imported from any foreign country they shall be applicable to the products of such country, whether imported directly from the country of production or otherwise. To secure information to assist the President in the discharge of the duties imposed upon him by this section, and the officers of the Government in the administration of the customs laws, the President is hereby authorized to employ such persons as may be required.

It is thus seen that Mr. Aldrich had retained the fundamental idea of the Payne plan—that of establishing a minimum or general tariff and advancing the rates to those countries which should prove to be recalcitrant in refusing us their best terms. He had, however (in place of Mr. Payne's provision for an advance of 20 or 25 per cent. of the minimum rates), substituted a provision whereby 25 per cent. *ad valorem* was to be added to the minimum rates. This of course was a very large increase in the difference

between the maximum and minimum levels and would in some cases have resulted in advancing schedules of relatively low duties by several hundred per cent. should the maximum tariff be applied.

One provision in the maximum and minimum section deserves special attention. Throughout the tariff struggle, business men had made earnest effort to secure the appointment of a "tariff commission," but up to the very last they had met with no success. Toward the end, it had been seen that the President would have to call for some expert work in determining the countries to which maximum or minimum rates, as the case might be, should be applicable, and it had been determined to make a trifling concession to the commission movement by inserting a provision designed to create a board of tariff advisers of some kind. The business men had been desirous that this board should be an established and recognized governmental agency analogous in its scope and standing to the Interstate Commerce Commission, charged with the power and duty of investigating domestic conditions of production and recommending to Congress and the President changes in tariff rates when such should be desirable. The tariff framers in Congress had resented this idea and had sought to limit the work thus to be done to that of merely investigating foreign tariffs for the purpose of ascertaining whether or not discrimination was being practiced against the United States by any country or countries. At the last, owing largely to the influence of President Taft, the provision was left somewhat vague, and, with a twofold interpretation in Congress regarding its meaning, the language incorporated in sec. 2 as already quoted was adopted.

II

It is now necessary to review briefly our tariff position with reference to foreign countries. In 1906 we had concluded a tariff arrangement with Germany whereby we gave that country the advantage of the lower rates of sec. 3 of the Dingley Law and at the same time made important innovations in our customs administrative system. Of these latter changes the most important were two in number: (1) We permitted the use of export

values in cases where there was no home market value, as a basis of assessment of duty at United States customhouses, and (2) we waived the earlier requirement that invoices of export goods be "consulated" in the districts where the goods were produced. These and other concessions had been embodied in a diplomatic note issued April 22, 1907. Subsequently we had entered into somewhat similar arrangements with France, Switzerland, Bulgaria, Great Britain, Portugal, Italy, Spain, and the Netherlands. These agreements we now revoked. Sec. 4 of the tariff of 1909 contained the following provision:

> That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the terms of said commercial agreements shall remain in force. . . . . That in the case of those commercial arrangements or agreements made in accordance with the provisions of section 3 of the tariff act of the United States approved July 24, 1897, which contain no stipulations in regard to their termination by diplomatic action, the President is authorized to give to the governments concerned a notice of termination of six months, which notice shall date from April 30, 1909.

The tariff act was passed on August 5. Earlier in the year, a preliminary notice had been sent to the various governments warning them of the probability that the commercial agreements they enjoyed with this country would be abrogated. On August 7 the State Department gave formal notice of the terms of the tariff act in so far as they affected relations with foreign countries, and on August 10 the action thus taken was made public in detail by the Treasury Department in a letter to the Collector of Customs at New York which read as follows:

> You are informed that the Secretary of State, acting by direction of the President in pursuance of the provisions of section 4 of the tariff act of the United States, approved August 5, 1909, gave, under date of August 7, 1909, formal notice to the several governments with which commercial agreements under the provisions of section 3 of the Dingley tariff act have been concluded, of the intended termination of these agreements at dates as specified below:
>
> The Government of France was notified that the commercial agreement of May 28, 1898, the amendatory and additional agreement of August 20, 1902, and the additional commercial agreement of January 28, 1908, would

be terminated at the expiration of six months dating from April 30, 1909, namely, on October 31, 1909.

The Government of Switzerland was notified that the proclamation issued by the President on January 1, 1906, would be abrogated at the expiration of six months dating from April 30, 1909, namely, on October 31, 1909.

The Government of Bulgaria was notified that the proclamation issued by the President on September 15, 1906, would be abrogated at the expiration of six months dating from April 30, 1909, namely, on October 31, 1909.

The Government of Germany was notified that the commercial agreement signed at Washington on April 22, 1907, and at Levico, Austria, on May 2, 1907, would be terminated at the expiration of six months dating from August 7, 1909, namely, on February 7, 1910.

The Government of Great Britain was notified that the commercial agreement of November 19, 1907, would be terminated at the expiration of six months, dating from August 7, 1909, namely, on February 7, 1910.

The Government of Portugal was notified that the commercial agreement of May 22, 1899, and the additional and amendatory agreement of November 19, 1902, would be terminated at the expiration of one year from August 7, 1909, namely, on August 7, 1910.

The government of Italy was notified that the commercial agreement of February 8, 1900, and the supplementary commercial agreement of March 2, 1909, would be terminated at the expiration of one year from August 7, 1909, namely, on August 7, 1910.

The Government of Spain was notified that the commercial agreement of August 1, 1906, and the supplemental commercial agreement of February 20, 1909, would be terminated at the expiration of one year from August 7, 1909, namely, on August 7, 1910.

The Government of the Netherlands was informed that the commercial agreement of May 16, 1907, would be terminated at the expiration of one year from August 7, 1909, namely, on August 7, 1910.

Careful examination of this order will make plain the following points:

1. The order established three classes of countries favored in different degrees under the tariff by the longer or shorter continuance of their tariff concessions. This was the result of the clumsy and unwise wording already described in which the countries were differently treated according to the length of notice provided for in their respective agreements.

2. In the first class were placed France, Bulgaria, and

Switzerland, which were deprived of their reciprocity concessions on October 31, 1909.

3. In the second class were placed Germany and Great Britain, both deprived of the reciprocity rates on February 7, 1910.

4. In the third class were placed Portugal, Italy, Spain, and the Netherlands, all deprived of their reciprocity rates on August 7, 1910.

5. A sharp discrimination was thus produced between the three classes of countries.[1] For instance, the reciprocity rate on brandies, etc., under sec. 3 of the Dingley Act had been $1.75 per gallon. This was raised to $2.60 under the minimum rates of the tariff of 1909. Thus after October 31, 1909, French brandies would pay $2.60 per gallon, while German would pay $1.75 per gallon until February 7, 1910, and those of Italy, Spain, and the Netherlands would retain the rate of $1.75 until August 7, 1910. Like differences existed in regard to wines.

III

In order fully to understand the significance of the action thus taken it is worth while to glance at another phase of the Tariff Act of 1909. The act had included a complete revision of

[1] Sec. 3 of the Dingley tariff had allowed the following reduced rates which were embodied in the various commercial agreements:

Upon argols, or crude tartar, or wine lees, crude, 5 per cent. *ad valorem.*

Upon brandies, or other spirits manufactured or distilled from grain or other materials, $1.75 per proof gallon.

Upon still wines, and vermuth, in casks, 35 cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, $1.25 per case, any excess beyond these quantities found in such bottles or jugs to be subject to a duty of 4 cents per pint or fractional part thereof, but no separate or additional duty to be assessed upon the bottles or jugs.

Upon champagne and all other sparkling wines, in bottles containing not more than one quart and more than one pint, $6 per dozen; containing not more than one pint each and more than one-half pint, $3 per dozen; containing one-half pint each or less, $1.50 per dozen; in bottles or other vessels containing more than one quart each, in addition to $6 per dozen bottles on the quantities in excess of one quart, at the rate of $1.90 per gallon.

Upon paintings in oil or water colors, pastels, pen and ink drawings, and statuary, 15 per cent. *ad valorem.*

the customs administrative law. This had been deemed necessary by the protected interests because of the fact that the commercial arrangements with the foreign countries already referred to had included the important changes in customs administrative methods and in the establishment of values for the assessment of duty which have already been briefly referred to. In subsec. 11 of this revision (the revision being itself sec. 28 of the law) occurred the following language:

SEC. 11. That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an *ad valorem* duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture, such cost of production to include the cost of materials and of fabrication, and all general expenses to be estimated at not less than ten per centum, covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than eight nor more than fifty per centum upon the total cost as thus ascertained; and in no case shall such merchandise be appraised upon original appraisal or reappraisement at less than the total cost of production as thus ascertained. The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding six per centum, if any has been paid or contracted to be paid on consigned goods, or a reasonable allowance for general expenses and profits (not to exceed eight per centum) on purchased goods.

The Treasury order which had been issued, as already explained, had made no reference to the customs administrative concessions which were contained in the reciprocity treaties or

to the changes therein which would presumably follow from the change in the customs administrative act thus introduced in subsec. 11 of the new law. It was intended at the start to maintain these customs administrative concessions in effect during the life of the agreements themselves, as set forth in the note of the State Department dated August 10. This was possible because the tariff of 1909 provided not merely for the continuance of the rates prescribed in the agreements but also for observance of their "terms"—a word obviously intended to include the administrative provisions. Strong pressure from domestic manufacturers was at once brought to bear in order to compel a reconsideration of this determination, and in consequence a closer scrutiny of the act was undertaken with a view to cutting off all possible concessions. The treasury, yielding to the pressure, finally issued an order under date of October 25, 1909, in which it canceled the provisions of the reciprocity treaties as to export value and as to the "consulating" of invoices, from and after October 25, except in the case of Germany and the Netherlands. Those two countries had happened to mention the matter of market and export values in their treaties with the United States as one of the specific considerations on which the agreement in each case was based, so that abrogation before the expiration of the agreement was impossible. To them, therefore, the old method of ascertaining the values of goods was continued. Such continuance was to last until February 7, 1910, in the case of Germany, and August 7, 1910, in the case of the Netherlands.

This order practically completed the steps necessary for putting the new tariff into operation in its effect upon foreign countries. The next stage which was now to open was that of negotiation, with a view to establishing the conditions under which maximum rates should be applied to foreign countries. Before passing to a consideration of this second stage of our foreign tariff relations under the act of August 5, it will be worth while to recapitulate the successive steps by which we had assumed an entirely new tariff position.

By the new tariff act we had (1) provided for abrogating all these agreements; (2) abolished the low reciprocity rates of

the Dingley Act; (3) provided for a new maximum 25 per cent. *ad valorem* higher than our regular rates; (4) raised the minimum rates so much on some articles that they were already largely above the treaty rates even without the additional maximum; (5) abrogated the chief concession of the treaties in respect to customs administration; and (6) demanded of all countries the lowest rates granted by them to any other country independent of what they had obtained in exchange for such low rates, offering, ourselves, nothing in exchange and merely putting forward a tariff threat to be made effective in the event of failure to comply with our wishes.

IV

President Taft and his Secretary of the Treasury had early taken the provisions of sec. 2 under personal advisement. With a view to the negotiation of new commercial agreements with foreign countries to replace the old commercial agreements the President had by advice of Secretary MacVeagh and under the authority granted in sec. 2 appointed three "persons" to assist in the work of applying the law. These were H. C. Emery, J. B. Reynolds, and A. H. Sanders,[2] Mr. Emery being specifically designated as chairman. Toward the end of September, 1909, they organized under the title of "The Tariff Board." It was determined to address the attention of the board first to the question of foreign relations exclusively, although President Taft in published interviews or statements predicted that later the Board would be assigned to duty in studying domestic costs of production and their adjustment to rates of duty. Meanwhile the board began work, investigating our status in foreign countries and examining the question whether we were laboring under any discriminations there.

Almost simultaneously with this action by the Tariff Board which had been thus organized in the Treasury Department under the direction of Secretary MacVeagh, Secretary Knox of the

[2] Mr. Emery, at the time of his appointment, was professor of political economy in Yale University; Mr. Reynolds was Assistant Secretary of the Treasury, and Mr. Sanders was editor of the *Breeders' Gazette*.

State Department established a tariff organization of his own. He had secured from Congress an appropriation of $100,000 for the purpose of advancing the commercial interests of the United States. He now used this in part for the employment of two "commercial advisers" and a staff of clerks, etc., who in conjunction with J. B. Osborne, the chief of the Bureau of Foreign Trade Relations in the State Department, thus formed a kind of tariff board or commission, although not formally organized as such. Both bodies found that irritated and strained feeling with reference to the United States existed in foreign countries.

The immediate causes of this feeling were twofold. Foreign countries had long felt that the United States had been unfair to them in using its great commercial power for the purpose of forcing its way into their markets without giving anything in exchange. This feeling was greatly intensified by the provisions of the tariff law of August 5. As has been seen, that law cut off the slender tariff concessions that had been granted in sec. 3 of the Dingley Act, as well as the moderate administrative innovations of President Roosevelt, and made a general increase in tariff rates while holding out to foreign countries a threat that unless they gave us very much better terms than they had done in the past we should apply to their goods a still higher tariff. The second cause for irritation lay in the fact that our tariff administrators had now sought to institute discriminations against various foreign countries by grouping them in the three classes already referred to. This grouping was a necessary outcome of the language employed in the Act, but inasmuch as that language had been drafted by Secretary Knox of the State Department and had been accepted by Congress exactly as he offered it, it was not felt that our administration had acted with due consideration. The action taken by the Department of State under the law was exceptionally severe in its effect on some of the countries because other countries which had stipulated for a longer period of notice under the reciprocity treaties were now assured of several months' enjoyment of the exceptionally low rates of those agreements. These were substantially below the level of the minimum rates of the new tariff on the same articles,

and thus, while foreign countries complained of the new status generally, they felt that they had particularly good ground of complaint in the unnecessarily preferential treatment which was given to some and denied to others.

While these were the most significant elements of dissatisfaction on the part of foreigners there were also some special and local difficulties. The tariff law had provided for the free admission of wood pulp used in the manufacture of paper from those countries which established no export taxes or charges upon such commodities shipped to the United States. The provision was found in paragraph 406, which fixed a duty of 1-12 of one cent per pound on wood pulp, with free admission from the countries which, as indicated, left the exportation unrestricted. The same paragraph, however, provided that in case such restrictions were applied the export duty or interior charge exacted by any exporting country should be added as an extra duty to the 1-12 of one cent per pound already fixed and to the corresponding duties upon other forms of wood pulp. Immediately after the tariff had been adopted wood pulp and print paper men, eager for revenge upon the publishing industry which had subjected them to such severe stress in the struggle for a reduction in the tariff on paper and wood pulp, began a series of representations to the Treasury Department. They argued that in the provinces of Quebec and Ontario, Canada, there existed a system of duties levied upon wood cut on crown lands for the purpose of manufacturing wood pulp for export. On the strength of this they demanded the imposition of the higher rates established in paragraph 406. Moreover, inasmuch as the provision for maximum rates permitted the President to apply such rates to all the products of provinces or divisions of government which discriminated against us in any respect, they demanded that the general maximum rates of our tariff be applied to all products coming from Ontario and Quebec, and even suggested the propriety of applying them to the whole of Canada. This indefensible plea was of course rejected by the Treasury Department. The department, however, felt compelled by the insistent demands of the paper interests to apply the retaliatory rates on pulp and

paper and did so in an order of October 16 contained in a letter addressed to the collector of customs at Detroit. The duty thus imposed was fixed at 25 cents per cord in addition to the regular duty of 1-12 of one cent per pound. A countervailing duty of 35 cents per ton was also imposed upon printing paper manufactured from pulp wood made of timber cut on crown lands in Quebec. The domestic interests were by no means content with the partial victory which they had just gained, but demanded a revision of the rate of equivalence established by the Treasury between the wood pulp and print paper with a view to still higher countervailing rates. This demand, however, was rejected. Nevertheless the incident had aggravated the ill feeling already existing between the United States and Canada, and additional obstacles were thus thrown in the way of easy and successful negotiations.

V

The investigation carried on by the tariff board and by the State Department into the tariff systems of foreign countries during the autumn and winter of 1909–10 showed that with respect to most of these countries there was no ground for the imposition of our maximum rates. President Taft moreover speedily became convinced that from the standpoint of domestic politics it was not desirable to be too exacting, and in his annual message sent to Congress at the opening of December, 1909, he gave a general assurance that there would be no tariff war unless the administration were actually driven to it. On January 18 the State Department, upon the advice of its own tariff investigators and with the concurrence of the tariff board in the Treasury Department, prepared a proclamation which was signed by President Taft, in which the minimum rates were extended definitely to Great Britain, Russia, Italy, Spain, Switzerland, and Turkey. This was followed on January 28 by another proclamation giving the minimum rates to Denmark, The Netherlands, Norway, Sweden, Belgium, Egypt, and Persia. Thus France and Germany were practically isolated in their tariff relations with the United States, substantially the whole of Europe outside of their territory being now given the most favorable terms that could

be extended under the Payne-Aldrich Act. With France and Germany as well as with Canada, however, difficulties had early become threatening and serious. Under our reciprocity treaty with Germany we had been receiving rates which admitted to that country about 97 per cent. of the value of our export trade with that country subject to the minimum rates of the German tariff. Our abrogation of the commercial treaty from and after February 7, 1910, meant that unless some basis of accommodation were arrived at, the German maximum rates would go into effect against us automatically upon that date. So with France, the abrogation of the commercial treaty meant that we must submit to the maximum rates of the French tariff from and after November 1. This was also an automatic action resulting from the operation of the French law and mandatory upon her officials in the absence of any special agreement with the United States. The situation was complicated by the fact that a reciprocity treaty between France and Canada, whereby various substantial concessions were mutually made, had been nearly completed, so that it would be impossible to complete our negotiations with either of those countries without securing some understanding with the other. Our evident antagonism to the French treaty added to the bad feeling toward us which was already evident in Canada, which had been greatly aggravated by the wood pulp incident, and which now presented a serious problem.

The earlier date at which the French treaty was to close made the issue particularly acute. It was impossible to think of completing negotiations with France before November 1. Secretary Knox and the majority of the Taft cabinet, including the President himself, were either out upon the stump or resting quietly at their homes away from Washington, while Ambassador Jusserand was in Paris. Guided by the dictates of the French tariff law, the administrators at Paris, in a decree of August 20, 1909, met our notice of the abrogation of the commercial treaty by giving us the full French maximum upon products of the United States and Porto Rico from and after November 1. This necessitated changes in duties as indicated in the following table:

RATES OF DUTY ON AMERICAN PRODUCTS IMPORTED INTO FRANCE

French Tariff No		Minimum, per 100 Kilos	General, per 100 Kilos *	Increase
	Agreement of 1898	Francs	Francs	Percentage
17bis	Manufactured and prepared pork meats....	50	100	100
19	Canned meats.....	15	20	33
30	Lard.....	25	40	60
84	Table fruits, fresh:			
	Lemons, oranges, cedrats, and their varieties not mentioned.....	5	15	200
	Mandarin oranges.....	10	25	150
	Common table grapes.....	8	25	212
	Apples and pears—			
	For the table.....	2	5	150
	For cider and perry.....	1.50	2	33
	Other fruits except hothouse grapes and fruits	3	5	67
85	Fruits, dried or pressed (excluding raisins):			
	Apples and pears—			
	For the table.....	10	15	50
	For cider or perry.....	4	6	50
	Prunes.....	10	15	50
	Other fruits.....	5	15	200
128	Common woods, logs.....	0.65	1	54
	Sawed or squared timber 80 mm. or more in thickness.....	1	1.50	50
	Sawed or squared lumber exceeding 35 mm. and less than 80 mm. in thickness.....	1.25	1.75	40
	Wood sawed 35 mm. or less in thickness	1.75	2.50	43
129	Paving blocks.....	1.75	2.50	43
130	Staves.....	0.75	1.25	67
160	Hops.....	30	45	50
174ter	Apples and pears crushed, or cut and dried	1.50	2	33
	Agreement of 1908			
96	Coffee in the bean (decree of Feb. 21, 1903)	136.00	300.00	121
197	Petroleum, schist, and other mineral illuminating oils (decree of July 7, 1893):			
	Crude.....	9 or 7.20 per hectoliter	18.00	100
	Refined, and essences of.....	12.50 or 10 per hectoliter	25.00	100
198	Heavy oils, and residues of petroleum and other mineral oils (decree of July 7, 1893).....	9.00	12.00	33

*The application of the rates of the general tariff indicated in the second column of the above table represents increases in duty ranging from 33 per cent. to 212 per cent. over those paid under the minimum tariff.

The effect of this change in rates was immediate and marked. On both sides merchants stocked themselves heavily with several months' supplies of goods in advance, and after November 1 trade

fell off largely on both sides. Thus our exports of petroleum to France, which had been very substantial, were cut to almost nothing during November, and large declines took place in other articles although we were helped in the aggregate trade showing by the increased value of cotton and some other staples that we regularly shipped to France without duty or at low rates. The falling off was sufficient to cause serious anxiety among business men and heavy pressure for some accommodation. Very little progress, however, was made in the negotiations with France up to February 1, 1910, for French diplomats immediately and flatly said that the idea of giving the United States their whole schedule of minimum rates as apparently to be demanded under the law was absurd and could not be considered for a moment. Moreover, the tariff board and the investigators of the State Department found that the pending reciprocity treaty between France and Canada presented a difficult situation which they thought should not be overlooked. The treaty had been finally approved in the French Senate on April 1, 1909, and only the consent of the Canadian parliament, practically certain to be granted, was necessary. The treaty would have established a severe discrimination against the United States entirely out of harmony with the idea of our maximum tariff.

The proposed concessions to be made to Canada by France were found to consist in the application of a large number of the minimum rates of the existing French tariff to Canadian products, the number of rates thus covered by the treaty exceeding 350, although the number of items covered by these rates would be considerably larger. Among the most important reductions of duty favoring Canadian products imported into France and not enjoyed by imports into that country from the United States were on cattle, 33 1-3 per cent.; on meats (other than canned and pork meats, on which the United States had the same concession), 30 to 40 per cent.; on potatoes, 86 2-3 per cent.; on other vegetables, 20 to 60 per cent.; on butter, 33 per cent.; on cheese, 57 to 66 per cent., according to kind; on agricultural implements, 40 per cent.; on sewing machines, 20 to 30 per cent.; on dynamo-electrical machinery, 26 to 56 per cent.; on textile

machinery, 23 to 33 per cent.; on tools of all kinds, 14 to 33 per cent.; on wire nails, 31 to 46 per cent.; on tubes of iron and steel, 20 to 33 per cent.; on furniture, 14 to 35 per cent.; on woodenware, 16 to 50 per cent.; on rubber goods, 16 to 33 per cent.

The articles of French manufacture which were likely to compete with similar products from the United States and which would enjoy special reductions of duty when imported into Canada, under the new treaty would have been as follows (the percentages here given indicating the extent to which duties levied on goods coming from France will be lower than those to be levied on imports from the United States): canned meats and extracts of meats and soups of all kinds, 9 per cent.; cheese, 7 per cent.; canned tomatoes and corn, 16 2-3 per cent.; other canned vegetables, including baked beans, 33 1-3 per cent.; pickles, sauces, and catsups, 7 per cent.; dried plums, raisins, and currants, 33 1-3 per cent.; canned fruits, 11 per cent.; canned fish, 11 to 20 per cent.; confectionery of all kinds, 7 per cent.; printing ink, 12 1-2 per cent.; writing ink, 10 per cent.; window glass, 16 2-3 per cent.; manufactures of brass and copper, watches and clocks and parts thereof, 8 to 16 2-3 per cent.; miscellaneous manufactures of iron and steel, 8 per cent.; locomotives and motor cars for railways and street railways, 14 per cent.; telephone and telegraph instruments and electrical apparatus of all kinds, 9 per cent.; manufactures of wood, 10 per cent.; house and office furniture, 8 per cent.; wire doors, wire windows, and window cornices, 8 per cent.; cash registers, 8 per cent.; leather goods, 9 per cent.; trunks, valises, etc., 8 per cent.; scientific, photographic, and similar instruments and apparatus, 10 per cent.; unenumerated articles, 12 1-2 per cent.

In taking up the French-German-Canadian tariff problem which was to constitute their serious work, the tariff experts of the State Department and the Treasury found that Germany was in a decidedly more receptive mood than France. A number of questions that were open had tended to defer the possibility of action on the part of France, while the Franco-Canadian treaty already referred to made the problem exceptionally difficult. In the case of Germany there was, however, strong desire to get

tariff relations with the United States settled. No irritation had been caused on this side of the water by the application of the maximum German rates which would not take effect until February 7, while the German government itself realized that a very serious blow would be struck at German commerce should it determine to bring on a contest with the United States. Although there was a strained feeling on both sides at the opening of the negotiations, Germany regarding our attitude as selfish and unjust, rapid progress was made in formulating the conditions demanded by either side. Germany from the first insisted upon receiving not only the complete prevailing rates of our regular tariff but also demanded that there should be no breach in the principle of assessing customs valuation embodied in the reciprocity treaty of 1907. The United States laid great stress upon the existing system of meat inspection in Germany as unduly discrediting the inspection in the United States, applying this complaint particularly to the failure to accept our microscopic examination of pork. It further pointed to the administrative action of the German government in excluding live cattle of American origin from Germany as being an unnecessary discrimination against us during those years when our cattle were shown to be healthy and free from infection. An additional and extraneous point was brought into the negotiations by reason of the disposition of the German government to associate German producers of potash into a kind of trust with the avowed object of cutting off the low-priced contracts that had been made with American consumers of potash during the sharply competitive period which had existed in 1909. Points with reference to the working of our pure food law as applied to goods entering Germany from the United States and entering the United States from Germany were also raised. In addition of course we demanded the minimum rates which had been extended by Germany to the various countries with which she had treaty arrangements. Germany lost no time in responding that she could not consider the question of waiving the existing ban upon live cattle from America for the reason that the German agrarian party was so strong as to put such a concession out of the question. Much the same attitude

was taken with respect to pork. The government was willing to give us, however, the full benefit of all her minimum tariff rates, thus satisfying the technical requirements of the Aldrich-Payne law. The offer thus made was unsatisfactory to American negotiators, and the situation was still further complicated by action on the part of tariff experts of the State Department who insisted on certain extra reductions in rates of duty on special kinds of goods which American makers wished to push abroad. The chief point on which we insisted, however, was the placing of our cattle on a better basis. Owing to popular misunderstanding in the United States this demand was misconstrued as being intended for the aid of the "beef trust," and pressure for its withdrawal became very strong. After a tedious period of negotiation it was announced on February 3, 1910, that the two countries had agreed to waive the cattle question and the pure food question, reserving them as a matter for subsequent discussion, with assurance from the German government that our request regarding cattle should have due consideration in the future. The Germans on their side agreed to relax the regulations which had operated to keep out American pork. The potash question and a minor matter relating to the drawback on flour exported from Germany were left out of the discussion. We gave Germany assurance that we should endeavor to apply the customs administrative law in such a way as to prevent unfavorable treatment of German imports, while we also explained the points which had been raised with reference to the interpretation and application of our pure food law. Germany gave us her whole minimum tariff schedule and we of course gave Germany ours. Reduced to lowest terms the agreement was based on an exchange of minimum for minimum, Germany relaxing her regulations on pork to a small degree. The only feature of direct interest in connection with the tariff was thus the extension of the whole of the German minimum schedule. Up to 1910, under the reciprocity treaty of 1907, we had received the lowest rates on commodities aggregating about 97 per cent. of the total American exports to Germany. The other 3 per cent. or so which paid the maximum rates included a great variety of products, but they

were chiefly either goods which we did not produce or goods with which we cannot hope in the near future to compete in German markets. This means therefore that the extension of the full minimum schedule to our exports is not only of exceedingly slight importance at the present time but is likely to continue so. What its value will be is entirely problematical and depends wholly upon the extent to which we can succeed in building up a trade in these particular commodities. As the German tariff rates are not high compared to ours and not very high absolutely, it is not likely that the question of maximum or minimum rates has very much relation to the status of our goods in German markets. The settlement which has been arrived at gives a minor benefit to our exporting class and imposes a serious injury upon our consumers of German goods because the method of ascertaining valuations under the new tariff is such—despite the assurances we have given to the German government—as to result in decidedly higher valuations for the assessment of duties. This means correspondingly higher prices to the consumer. The main ground for congratulation in the German episode is therefore simply this—that we have not inflicted a serious injury upon ourselves by applying our own maximum tariff rates to importations from that country.

The German settlement, moreover, simplifies the problem still to be dealt with by our tariff negotiators, since it leaves only the issue raised by the maximum tariff of France and the discriminating Franco-Canadian treaty to be disposed of. Minor problems may be expected to arise with respect to South American and other countries, but they are likely to be of relatively slight importance.

VI

The provisions of the tariff of 1909 for commercial retaliation may be criticized from two distinct standpoints, regarding (1) their effectiveness, and (2) their justice. It is of little use to employ canons of judgment based on ideas so abstract as those of "ethics" or "justice" in dealing with a tariff question, and the discussion may therefore with advantage be limited to the question: Will the terms of the new tariff enable the United States

to seize a due share of the plunder in the international contest for trade, or will it result in hampering the operations of our tariff privateers in their work against other nations? This is largely, if not solely, a mere question of the adaptation of means to ends.

In answering the question thus put, several factors in the problem of international negotiations frequently discussed in connection with the commercial treaties of the past few years but as frequently allowed to fall into neglect must be recalled. Most of the European countries have already consented to give us their minimum rates of duty notwithstanding that we have offered nothing in exchange and have presented merely a tariff threat to enforce our claims. But it is fair to ask whether such concession to our demands, even if granted by France and Canada as it has been by Germany, will meet the needs of our export trade. Most certainly it will not. The mutual concessions made by foreign countries to one another are based upon elaborate bargains which grow out of special trade conditions. To secure for ourselves the like advantages would be of as much less benefit to us as our exportation of the given commodities is less than that of the countries which originated the tariff concessions. If China made a minimum rate to Japan of 10 cents per pound on tea, and Japan made a minimum rate to China of $1 per hundred on preserved sharks' fins, it would not help us to sell cotton goods in China and Japan though both countries should give us the lower rates on tea and sharks' fins they had conceded to one another. The same situation holds good in a less extreme degree of many of the concessions granted by European countries to one another. The new tariff makes no provision for demanding or bargaining for any new minimum rates suited to our own export needs. It sends our bargainers into the international market armed with a crowbar when they ought to have a set of burglars' tools in order to get the results sought.

In order to secure concessions in tariff duties proportionate to those granted by European countries to one another it is requisite that our Administration be given power to make a schedule of rates on imported goods which need not fall below the fixed minimums of the tariff and need not exceed the maximums,

but which shall be adjusted to the requirements of the international bargaining process. To do this would mean that the President had power to establish tariff rates within certain limits. The Supreme Court has held that this power may constitutionally be delegated to the President, and this leaves merely the question whether Congress in its wisdom will think best to bestow the power. Of this it is sufficient to say that the point was clearly and unmistakably raised with the leaders while the maximum rate question was up for discussion, but that no results were secured. Congress was then suffering a serious attack of Roosevelt-phobia and was plainly unwilling to increase the powers of the President in any degree whatever. The result was the present rigid provision.

There is, however, no positive assurance that the remaining countries of the world, France and Canada particularly, will admit us to the full advantages of their minimum rates. In that event there is no alternative except to apply the maximum rates—a flat increase of 25 per cent. *ad valorem*—unless it be a meek acceptance of the refusal to give us the minimum rates on the ground that the higher duties enforced against us were not "unduly discriminatory"—a step which would expose us to the ridicule of the civilized world because of the bluster with which the new policy has been inaugurated.

Whatever is done under the new tariff, we are placed in a singular and indefensible position with respect to our attitude regarding the most favored nation clause in commercial treaties. In spite of our traditional interpretation of this clause we now discard our former principles in their application to our own case and present ourselves as asking all concessions while maintaining high rates and giving nothing in exchange—a position both oppressive and ridiculous.

VII

The summary review of the tariff of 1909 which was originally undertaken in these pages is now complete. It has been seen that the tariff was deceptive and false in its inception and framing, political and dishonest in its presentation, discussion, and

passage, misleading and double-faced in its terms, and clumsy in its application to international conditions. It has materially lowered no general range of duties but has heightened many. It has redistributed the burden of tariff taxation so as to make it substantially harder to bear. It has failed to meet an important international situation in any adequate way. From every standpoint the bill has proved unsatisfactory and disappointing. It is a discredit to the party responsible for it and as great a discredit to the party which failed to offer effective opposition to it.

The tariff question has not been even temporarily settled. It now goes to the public for final adjudication.

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